

The ALJ denied Claimant's requests for compensation after finding Claimant failed to prove by a preponderance of the evidence it is more probably true than not he was injured while performing his work duties. The ALJ also found Claimant was currently at maximum medical improvement and therefore not in need of medical treatment.

Claimant argues the ALJ's Order should be reversed as credible evidence was presented to prove he suffered injury to his finger while performing his work duties.

Respondent argues the Order should be affirmed.

The issues on appeal are:

1. Did the injury to Claimant's finger arise out of and in the course of his employment with Respondent?
2. If the injury to Claimant's finger arose out of and in the course of his employment with Respondent, is he entitled to temporary total disability, an authorized treating physician and payment of outstanding medical bills?

#### **FINDINGS OF FACT**

Claimant alleges injury to his right index finger on Saturday, June 8, 2019, while cutting hooves (hocks) off cows. Claimant did not report the accident to his supervisor until Monday, June 10 because his regular supervisor was on vacation. Claimant told the nurse he had been hit on the hand by the hoof of a cow.

Claimant uses scissors to cut the hooves below the knee. The scissors hang from two cables and require the use of both hands. The cow carcasses are bound by the hind legs with the forelegs hanging down. Claimant cut the hooves off of the two front forelegs. Claimant wore cotton gloves under rubber gloves when operating the scissors.

Claimant testified after the hooves are cut, they can bounce and can bounce harder if the carcass is stiff. Claimant testified the scissors he was using on the day of the accident were not sharp. This affects the cut and whether the hooves bounce more or not. Paulino Rojas-Ramirez, a former co-worker, testified "from time to time, sometimes the hoof would . . . just kind, like, shoot out" because the "scissors would not work." Further, sometimes the carcass would "arrive a little alive from the nerves, [s]o when we would cut the hoof, the hoof would . . . shoot out" and "from time to time it will hit you."<sup>1</sup>

Claimant and Paulino Rojas-Ramirez viewed the videos of the job and the type of scissors used. Both testified the videos were an accurate depiction of the job, the scissors used and the right hand grip on the scissors.

Claimant was seen by Danny Briggs (Briggs) on June 12, 2019. Briggs is a physician assistant. He works two days per week for Respondent providing medical care. He was aware Claimant used large mechanical scissors for cutting off the hooves. It was

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<sup>1</sup> Ramirez Depo. at 7.

his understanding one of the hooves hit Claimant in the right index finger, which developed into an infection. Briggs noted Claimant's injury was to his right index finger at the distal inter phalangeal joint (closest to the nail) on the back side of the finger. Briggs diagnosed Claimant with cellulitis. To Briggs, it appeared to be a callous or wart on the knuckle area, not an injury. It also appeared to him someone had tried to drain the knuckle area by picking or puncturing it with a needle.<sup>2</sup>

Briggs opined Claimant's cellulitis was a personal condition secondary to a puncture wound. Briggs believed Claimant's injury could not have occurred as he described because the scissors he was operating did not expose his hands to this type of trauma:

. . . Mr. Espinoza's explanation of the occurrence, getting hit by a hock, I -- the job site -- the type of hock cutters that are used, your hands are not exposed to that type of trauma. Particularly the right hand in general, it is -- it is on the back of the -- of the hock cutter where the -- both of them have -- and I don't know the term I am looking for it. It is a protected guard. They have a hand guard over the front of them so something can't come back and hit your hands.

And based on the examination of the appearance of the wound at that time and his description, the two did not fit together that that would be a causation of this type of infection. It looked like it had been picked at and secondary to something [inaudible] in there, he got a cellulitis.<sup>3</sup>

Based on Briggs' opinion, Respondent denied Claimant's workers compensation claim. Claimant sought medical treatment from his personal physician, but was refused. Claimant returned to Briggs, who provided treatment on a personal and not work-related basis. In the course of treating Claimant, it became necessary to refer Claimant to a physician. Claimant underwent medical treatment with Dr. Mona Rane and Dr. Suhail Ansari through Claimant's personal insurance with Respondent and not workers compensation. On August 15, 2019, Dr. Ansari performed a right index finger distal interphalangeal joint irrigation, debridement, and fusion. Dr. Ansari provided treatment through December 10, 2019.

At the request of his attorney, Claimant saw Dr. Daniel Zimmerman on February 24, 2020. Upon examination, Dr. Zimmerman opined Claimant sustained a crush injury affecting the right 2nd digit and hand due to an accident occurring in his employment on June 8, 2019. Dr. Zimmerman noted Claimant developed an infection from the injury and was treated. He explained:

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<sup>2</sup> Briggs Depo. at 6-7; Ex. B.

<sup>3</sup> *Id.* at 8.

Q. Would that have been an infection to your understanding that would have resulted from this alleged cut that was caused by the flying hooves?

A. That's my thought, yes.

Q. From a medical standpoint how do you account for such an infection following the cut that was alleged by Mr. Rodriguez?

A. Bacteria got into the soft tissues of the digit.<sup>4</sup>

Dr. Zimmerman concluded as a direct, proximate and prevailing factor the June 8, 2019, accident, caused the infections, functional limitations and deformity of Claimant's 2nd and 3rd digits. He found claimant to be at maximum medical improvement and recommended restrictions and medication.

#### **PRINCIPLES OF LAW AND ANALYSIS**

Claimant argues the evidence proves he injured his right index finger when a hoof bounced and struck him causing his injury and resulting infection. Respondent argues Claimant could not have been injured in the manner he describes and Claimant failed to meet his burden of proof.

The ALJ denied Claimant's request for benefits stating "Upon review of the videos, it is difficult to believe the claimant was hit on the finger by a hoof, considering the location of the finger, and being hit with sufficient force to cause a breach of the skin while wearing 2 pairs of gloves."<sup>5</sup> This Board Member agrees with the ALJ's analysis and conclusion.

Claimant alleges he suffered an injury to his right index finger when he was struck by a hoof when it "bounced" after being cut. The injury sustained was at the interphalangeal joint closest to the finger nail. The videos, which Claimant and Rojas-Ramirez confirm accurately depict the job, reveal the index finger could not have been struck in the manner described by Claimant. Therefore, Claimant has failed to prove by the greater weight of the credible evidence he sustained an accidental injury arising out of and in the course of his employment with Respondent. The remaining issues asserted by Claimant are moot, and may be preserved by Claimant for final award.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>6</sup> Moreover, this

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<sup>4</sup> Zimmerman Depo. at 10-11.

<sup>5</sup> ALJ Order at 5-6.

<sup>6</sup> K.S.A. 2019 Supp. 44-534a.

review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2019 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Pamela J. Fuller dated May 16, 2020, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July, 2020.

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CHRIS A. CLEMENTS  
BOARD MEMBER

c: Via OSCAR

Thomas R. Fields, Attorney for Claimant  
Shirla R. McQueen, Attorney for Respondent and its Insurance Carrier  
Honorable Pamela J. Fuller, Administrative Law Judge